

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL WRIT PETITION NO.576 OF 2007**

Ashok Mariappa Dedhe ...Petitioner.
V/s.
The State of Maharashtra ...Respondent.

Shri Abhaykumar Apte, adv. for the Petitioner.
Shri U.V.Nikam, APP for the Respondent/State.

**CORAM: J.H.BHATIA, J.
DATE : 19th April, 2007.**

P.C.:

1. **Rule.**

2. Rule made returnable forthwith. With consent of the learned counsel for both the parties, petition is taken up for final hearing immediately.

3. Prosecution case in brief, is that the present petitioner, who is accused no.11 was driver of Sumo Jeep bearing no.MH-14-G-5375 belonging to his brother. That Sumo jeep was hired by the accused nos. 1 to 7 from Pune and the present petitioner was driving the said Sumo jeep. The said Sumo jeep chased the truck bearing no.TN-34-B-9131 from Hupri Kolhapur on Satara Pune Road and obstructed the said truck by stopping the Sumo jeep in front of the said truck near village Varve and forced the truck driver to stop it. After that the accused

nos. 1 to 7 threatened and beat the driver of the said truck. After that the truck was driven towards the road of Varve village and the door of the container of the said truck was broken open by the accused nos.1 to 7 with the help of accused nos.9 and 10, who were cleaner and driver of the said truck. After breaking open the door of the container, silver ornaments weighing 30 kg. 89 gms. and other articles weighing 13 kg., worth Rs.1,51,000/- were robbed. Stolen property was sold by accused no.7 to accused no.8. During the investigation of the case, property was recovered from the accused no.8 at the instance of accused no.7. After investigation charge-sheet is filed and the case is committed to the Court of Sessions, against 11 accused persons including the truck driver and the cleaner being accused nos.9 and 10 and the present petitioner, who was driver of Sumo jeep. Accused nos.9 and 10 made an application for discharge and it was allowed. The present petitioner also filed an application for discharge on the principle of parity but that application came to be rejected by the Additional Sessions Judge, Pune rejecting defence of the accused and observing that whether the accused had no common intention with the other accused, is a question which is to be decided only at the time of trial and after considering the evidence of prosecution witnesses on

their cross-examination. Being aggrieved by the rejection of application, petitioner filed the present writ petition.

4. Heard Mr.Abhaykumar Apte the learned counsel for the petitioner and Mr.Nikam, the learned APP and perused the relevant police papers.

5. Chapter 18 of the Code of Criminal Procedure deals with the trial before the Court of Sessions. Section 226 of the Cr.P.C. provides that when the accused appears or is brought before the Court in pursuance of a commitment of the case under Section 209, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused. Section 227 provides that if, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing. However, as per the Section 228 if, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed

an offence exclusively triable by the Court of Session, he shall, frame a charge against the accused.

6. From this, it is clear that before framing of the charge against the accused, the prosecutor has to describe the charge brought against the accused and has to state by what evidence he proposes to prove the guilt of the accused. Naturally it means that he has to disclose the evidence, which is collected by the investigating agency against the accused to prove the charge. If there is no evidence or material to prove the guilt of the accused, Judge has to discharge that accused under Section 227. If there is sufficient material and evidence collected by the investigating agency to prove the guilt of the accused, charge has to be framed as per Section 228 of the Cr.P.C. Whether the prosecution succeeds or fails in producing sufficient evidence before the Court to prove charge against the accused is a different matter but if there is no evidence at all against the accused, charge can not be framed against him and he can not be required to face the trial.

7. From the material collected by the police, it appears that there is nothing to show that the present petitioner had any common intention in the offence of

committing robbery or dacoity alongwith the accused nos.1 to 7. Prosecution case itself appears to be that the accused nos.1 to 7 had hired Sumo jeep belonging to the brother of the present petitioner and the present petitioner was working as a driver on that Sumo jeep. It is also admitted that he had not received any share in valuable property looted or robbed in that incident. The property was recovered on the basis of information given by other accused. According to the prosecution, the present petitioner was with accused nos.1 to 7 since beginning and he had seen the whole incident. He was present when the robbery took place and after commission of the offence, looted property was kept in the Sumo jeep and was taken away from the spot. Merely because the present petitioner was present throughout the incident , it can not be stated that he himself had committed the offence unless there is some evidence to establish his complicity in the offence. In fact taking into consideration all the circumstances, the present petitioner would have been an important witness against the accused nos.1 to 7 but unfortunately investigation agency filed chargesheet against him and thereby prosecution is being deprived of an important witness.

8. I am unable to subscribe to the view of the

trial Court that whether the present petitioner had common intention with other accused can be decided only after the trial and the cross-examination of the witnesses. As the investigation agency has not collected any evidence during the investigation against the present petitioner to show that he had common intention in commission of crime, charge could not be framed against him. I find that there is no substance or material on the basis of which charge could be framed against the present petitioner.

9. Therefore, petition is allowed and rule is made absolute in terms of prayer clause (a).

(J.H.Bhatia, J.)